

ESTTA Tracking number: **ESTTA370303**Filing date: **09/27/2010**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Road Tools Inc.		
Entity	Corporation	Citizenship	New Hampshire
Address	15 Frontier Street Rye, NH 03870 UNITED STATES		

Attorney information	Jeffrey H. Greger Lowe Hauptman Ham Berner LLP 1700 Diagonal Rd Suite 300 Alexandria, VA 22314 UNITED STATES jhgreger@ipfirm.com Phone:703-684-1111
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Registration Subject to Cancellation

Registration No	3527661	Registration date	11/04/2008
International Registration No.	NONE	International Registration Date	NONE
Registrant	YULONG COMPUTER TELECOMMUNICATION; SCIENTIFIC (SHENZHEN) Co., LTD 8 Floor, B Bldg, Hi-Tech Plaza Tian'an Cyber Park; Futian District, Shenzhen CHINA		

Goods/Services Subject to Cancellation


Class 009. All goods and services in the class are cancelled, namely: photography cameras; computer software use in database management; electronic pocket translators; radiotelephony set comprise of transmitters and receivers; video telephones; acoustics sets, namely, apparatus for wireless transmission of acoustic information

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2563728	Application Date	09/17/2001
Registration Date	04/23/2002	Foreign Priority Date	NONE
Word Mark	COOLPAD		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1997/07/16 First Use In Commerce: 1997/07/16 Computer stands specifically designed for holding a computer

Attachments	76312916#TMSN.gif (1 page)(bytes) Cancellation petition.pdf (9 pages)(273475 bytes) Exhibit A Coolpad.pdf (1 page)(22472 bytes) Coolpad Exhibit B.pdf (20 pages)(771033 bytes) Coolpad Exhibit C.pdf (12 pages)(377416 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/jhg/
Name	Jeffrey H. Greger
Date	09/27/2010

Cancellation Petition

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In the matter of U.S. Registration No. 3527661

Mark: **COOLPAD 酷派**

Registration Date: November 4, 2008

Road Tools LLC)	
)	
Petitioner,)	
)	
v.)	Cancellation No.: _____
)	
YULONG COMPUTER TELCOM.)	
)	
Registrant)	
)	

PETITION TO CANCEL REGISTRATION

~~COMES NOW~~ Petitioner, Road Tools, LLC an entity organized under the laws of New Hampshire, with an address of 15 Frontier Street, Rye, New Hampshire, 03870, believing that it is being damaged by Registration No. 3527661, hereby petitions to cancel same on the following grounds. Hereinafter Registration Number 3527661 is also referred to as “the 661 Registration.”

Cancellation Petition

Facts Common to All Counts

1. Petitioner is the owner of a U.S. Trademark Registration No. 2563728 for the mark COOLPAD covering computer stands specifically designed for holding a computer. (Hereinafter Registration No. 2563728 is also referred to as “the ’728 registration.”).
2. The ’728 registration is currently subsisting on the Principal Register of the U.S. Patent and Trademark Office (USPTO) and is valid.
3. On March 28, 2008 the USPTO accepted and approved the combined Sections 8 and 15 application and declaration with supporting use specimens thereby making the ’728 registration incontestable under Section 15 of the Lanham Act.
4. Petitioner commenced use of the mark COOLPAD on and in connection with sale of computer stands at least as early as July 16, 1997 more than fourteen (14) years ago.
5. Petitioner has used the mark COOLPAD as a trademark on and in connection with the sale of computer stands continuously in United States commerce from the middle of 1997 each and every year through the current day.
6. Over the course of past years Petitioner has sold over 900,000 computer stands under the COOLPAD computer stand brand.
7. Petitioner advertises its COOLPAD brand computer stands on the internet.
8. Petitioner’s advertising touting the COOLPAD brand can be seen on the internet using the domain name address *www.coolpad.com*.

Cancellation Petition

9. COOLPAD brand computer stands sold by Petitioner can be purchased at APPLE brand stores where the well-known IPHONE is also sold by Apple®, the famous computer, telephone and smart phone manufacturer.

10. Petitioner has enjoyed a manufacturing supply and vendor relationship with Apple® for many years as the supplier of COOLPAD brand computer stands.

11. By virtue of Petitioner's continuous use of the COOLPAD brand as a trademark throughout the United States, Petitioner has developed significant good will by virtue of its common law use rights.

Registrant's mark

12. According to the current USPTO records, Registrant YULONG COMPUTER TELECOMMUNICATION; SCIENTIFIC (SHENZHEN) Co. LTD. is Chinese legal entity, with an address of 8th Floor, B Bldg, Hi-Tech Plaza Tian'an Cyber Park, Futian District, Shenzhen CHINA.

13. Registrant filed for an application with the USPTO on July 14, 2006 using the Madrid Protocol and basing the application on International Registration No.

0910196 seeking registration for the mark

COOLPAD 酷派

for goods identified as follows:

“Computers, cameras (photography), word processors, computer software (recorded), processors (central processing units), electronic pocket translators, radiotelephony sets, BP call, video telephones, acoustics set.” The USPTO assigned serial number 79/033,536

Cancellation Petition

to the Registrant's application which matured into the 661 registration. (hereinafter application number 79/033536 is also referred to as "the 536 application." Registrant's application filing date of July 14, 2006 is long after the filing and registration date of April 23, 2002 for Petitioner's '728 registration thereby providing Petitioner with seniority as to use in the United States.

14. The Examining Trademark Attorney assigned to review the '536 application initially refused to mature the application asserting a likelihood of confusion

between the mark  and Petitioner's mark COOLPAD as appears in the '728 registration.

15. On July 9, 2008, Eastern Standard Time, Deying Guo, a general manager for Registrant filed a response with the USPTO amending the '536 application and therein deleting coverage for goods identified as "computers" and "word processors" in order to traverse the then pending refusal to register in view of the Petitioner's cited '728 registration.

16. Upon further examination the USPTO Examining Trademark Attorney withdrew the pending refusal to register and allowed the '536 application to mature into the '661 registration covering goods identified as follows:

photography cameras; computer software use in database management; electronic pocket translators; radiotelephony set comprise of transmitters and receivers; video telephones; acoustics sets, namely, apparatus for wireless transmission of acoustic information.

Cancellation Petition

17. On information and belief Registrant has not commenced actual use of the mark COOLPAD or formative versions thereof including

COOLPAD 酷派 on goods in United States commerce as of the filing date of this Cancellation Petition.

18. Registrant is however currently using the mark COOLPAD as a brand for smart phones in China and other countries around the world.
19. Registrant declared that it had a bona-fide intent to use the mark

COOLPAD 酷派 in the United States in is '536 application which matured into the '661 registration.

20. Smart phones and computers are highly related goods which are sold in the same channels of trade.
21. Petitioner has promoted its COOLPAD brand computer stand for use in connection with hand-held computers such as the Apple brand IPAD. An image of the COOLPAD product in use with an Apple brand IPAD is attached at Exhibit A.

22. Apple is a distributor of Petitioner's computer stand product sold under the COOLPAD brand.
23. Apple is a manufacturer of hand-held computers such as the IPAD® and smart phones such as the IPHONE®.
24. Many manufactures of hand-held computers also manufacture telephones and smart telephones.

Cancellation Petition

25. Smart phones and computer stands are advertised and made available for sale in the same channels of trade.
26. Telephones and computer stands are sold and made available to consumers in the same stores both online and in traditional retail store locations.
27. Trademark Owners have obtained federal registration coverage for both telephones and computer stands both goods being classified in international Class 9. A representative sampling of registered marks covering both telephones and computer stands is attached as Exhibit B.
28. The USPTO Trademark Trial and Appeal Board has held that printouts of federal registrations have probative value to the extent that they serve to suggest that the goods listed therein, such as for example, computer accessories like a keyboard, and devices such as video camera, are of a kind that may emanate from a single source. (See Exhibit C attached, TTAB decision at page ten.)
29. Petitioner's registration covering computer stands is not limited in channels of trade and therefore is assumed to travel in all channels normal for computer stands.
30. Petitioner's computer stands are an add-on accessory to computer products and sold as impulse item for a moderately low price retailing in the \$15.00 to \$30.00 price-range on average.

COUNT I – LIKELIHOOD OF CONFUSION – 15 U.S.C. §1052(d)

- 31 All prior allegations are incorporated herein by reference.

Cancellation Petition

32. The mark COOLPAD as registered in the '728 registration owned by the Petitioner covers all forms and stylization of COOLPAD because the mark is a typed, standard-character word-mark. Compared to the Registrant's mark the two marks side by side are essentially identical but for the addition of Chinese characters added to the Registrant's mark.

33. On information and belief consumers are likely to be confused that goods offered in connection with the mark as appears in the '661 registration are authorized, sponsored or affiliated by the Petitioner when in fact no such authorization or affiliation exists.

34. On information and belief consumers exposed to the Registrant's mark used in connection with telephones, cameras, computer software and video telephones, as well as the remaining goods as appears in the '661 registration are likely to be confused as to source, sponsorship and/or affiliation with the Petitioner's computer-related products due to the marks being nearly identical and the goods highly related and traveling in the same channels and marketed to the same consumers.

35. If the '661 registration is permitted to be maintained on the Principal Register, the existence of the registration on the Principal Register of the USPTO provides the Registrant with *prima facie* evidence of the exclusive rights to use the mark despite Registrant not being the primary source or indicia of the nearly identical mark owned and in use by Petitioner. Consumers will falsely associate and/or affiliate the Registrant's mark with Petitioner.

36. Registration of the mark as appears in the '661 registration is likely to cause confusion in the market and harm the good will established with respect to Petitioner's longstanding use of the nearly identical mark.

Cancellation Petition

Wherefore, Petitioner believes that it will be damaged by the continued existence and the perceived validity of Registration No. 3527661 and prays that this Petition for Cancellation be sustained in favor of the Petitioner; that judgment be entered against the Registrant; and that the U.S Trademark Registration No. 3527661 be canceled.

Petitioner submits the applicable filing fee of \$300.00 with this Petition.

Respectfully submitted,
LOWE HAUPTMAN HAM & BERNER, LLP

A handwritten signature in black ink, appearing to read 'Jeffrey H. Greger', with a stylized flourish at the end.

Jeffrey H. Greger
Attorney for Petitioner

1700 Diagonal Road, Suite 310
Alexandria, Virginia 22314
Tel: (703) 684-1111
Fax: (703) 518-5499

September 27, 2010

Certificate of Service

I hereby certify that a copy of the foregoing PETITION TO CANCEL has been forwarded to Registrant's currently listed correspondence address and contact information according to the current records as contained in the U.S. Patent and Trademark Office records as appears below, by prepaid United States mail this 27th day of September 2010.

Beijing SBZL; Intellectual Property Agents
Room 327,
Kanghou Building,
Beijing 100045
CHINA

Dated: September 27, 2010



Kilsy Baird

Exhibit A



Exhibit B



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Trü

Word Mark	TRÜ
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Cases for word processing tapes; silicone cases, carrying cases, protective cases, screen protectors, computer stands specially designed for tilting while holding a computer, computer docking stations, printers, wrist rests for use with computers and computer mouse, headsets and earphones, mouse pads, computer keyboards, all for portable computers, portable audio players, cellular telephones , digital cameras, personal digital assistants, portable telephones , and electronic personal organizers. FIRST USE: 20070601. FIRST USE IN COMMERCE: 20070601

Standard Characters Claimed**Mark Drawing Code** (4) STANDARD CHARACTER MARK

Trademark Search Facility Classification Code LETTER-3-OR-MORE TRU Combination of three or more letters as part of the mark SHAPES-CIRCLE Circle figures or designs including semi-circles and incomplete circles

Serial Number 77090526**Filing Date** January 24, 2007**Current Filing Basis** 1A**Original Filing Basis** 1B**Published for**

Opposition July 31, 2007
Registration Number 3599039
Registration Date March 31, 2009
Owner (REGISTRANT) Napier, Keiko Mase INDIVIDUAL UNITED STATES 10061 Riverside Drive, Unit 792 Toluca Lake CALIFORNIA 91602
Attorney of Record KEN SHIBATA
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Listen. And you'll be heard.

Word Mark
Goods and Services

LISTEN. AND YOU'LL BE HEARD.

IC 009. US 021 023 026 036 038. G & S: Cases for word processing tapes; **computer stands** specially designed for tilting while holding a computer; computer docking stations; printers; wrist rests for use with computers and computer mouse; headphones and earphones; mouse pads; computer keyboards; and silicone cases, carrying cases, protective cases, screen protectors, all for computers, audio players, video players, **telephones**, digital cameras, personal digital assistants, computer games, displays, calculators, televisions, GPS devices, and electronic personal organizers. FIRST USE: 20061101. FIRST USE IN COMMERCE: 20061101

Standard Characters Claimed
Mark Drawing Code

(4) STANDARD CHARACTER MARK

Trademark Search Facility Classification Code

NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks

Serial Number 77302286

Filing Date October 11, 2007

Current Filing Basis 1A

Original Filing Basis 1A

Published for

Opposition March 25, 2008
Change In Registration CHANGE IN REGISTRATION HAS OCCURRED
Registration Number 3444926
Registration Date June 10, 2008
Owner (REGISTRANT) Power Support USA, Inc. CORPORATION CALIFORNIA 3202 W. Magnolia Blvd
Burbank CALIFORNIA 91505
Attorney of Record Kenichi Shibata
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Seek Mobility The Spirit
is your compass. Let it
find the way.

Word Mark
Goods and Services

SEEK MOBILITY THE SPIRIT IS YOUR COMPASS. LET IT FIND THE WAY.

IC 009. US 021 023 026 036 038. G & S: Cases for word processing tapes; **computer stands** specially designed for tilting while holding a computer; computer docking stations; printers; wrist rests for use with computers and computer mouse; headphones and earphones; mouse pads; computer keyboards; and silicone cases, carrying cases, protective cases, screen protectors, all for computers, audio players, video players, **telephones**, digital cameras, personal digital assistants, computer games, displays, calculators, televisions, GPS devices, and electronic personal organizers. FIRST USE: 20061101. FIRST USE IN COMMERCE: 20061101

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Trademark Search Facility Classification Code NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters, punctuation and mathematical signs, zodiac signs, prescription marks

Serial Number 77302275

Filing Date October 11, 2007

Current Filing Basis 1A

Original Filing Basis 1A

Published for

Opposition March 25, 2008
Change In Registration CHANGE IN REGISTRATION HAS OCCURRED
Registration Number 3444925
Registration Date June 10, 2008
Owner (REGISTRANT) Power Support USA, Inc. CORPORATION CALIFORNIA 3202 W. Magnolia Blvd
Burbank CALIFORNIA 91505
Attorney of Record Kenichi Shibata
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Dream Protect Create

Word Mark DREAM PROTECT CREATE
Goods and Services IC 009. US 021 023 026 036 038. G & S: Cases for word processing tapes; **computer stands** specially designed for tilting while holding a computer; computer docking stations; printers; wrist rests for use with computers and computer mouse; headphones and earphones; mouse pads; computer keyboards; and silicone cases, carrying cases, protective cases, screen protectors, all for computers, audio players, video players, **telephones**, digital cameras, personal digital assistants, computer games, displays, calculators, televisions, GPS devices, and electronic personal organizers. FIRST USE: 20061101. FIRST USE IN COMMERCE: 20061101

Standard
Characters
Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 77302264

Filing Date October 11, 2007

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition March 25, 2008

Change In Registration CHANGE IN REGISTRATION HAS OCCURRED

Registration Number 3444924
Registration Date June 10, 2008
Owner (REGISTRANT) Power Support USA, Inc. CORPORATION CALIFORNIA 3202 W. Magnolia Blvd
Burbank CALIFORNIA 91505
Attorney of Record Ken Shibata
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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INGENUITY. PROTECT IT,
CULTIVATE IT. SEEK IT
EVERY DAY.

Word Mark INGENUITY. PROTECT IT, CULTIVATE IT. SEEK IT EVERY DAY.
Goods and Services IC 009. US 021 023 026 036 038. G & S: Cases for word processing tapes; **computer stands** specially designed for tilting while holding a computer; computer docking stations; printers; wrist rests for use with computers and computer mouse; headphones and earphones; mouse pads; computer keyboards; and silicone cases, carrying cases, protective cases, screen protectors, all for computers, audio players, video players, **telephones**, digital cameras, personal digital assistants, computer games, displays, calculators, televisions, GPS devices, and electronic personal organizers. FIRST USE: 20061101. FIRST USE IN COMMERCE: 20061101

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Trademark Search Facility Classification Code NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters, punctuation and mathematical signs, zodiac signs, prescription marks

Serial Number 77302252

Filing Date October 11, 2007

Current Filing Basis 1A

Original Filing Basis 1A

Published for

Opposition March 25, 2008
Change In Registration CHANGE IN REGISTRATION HAS OCCURRED
Registration Number 3444922
Registration Date June 10, 2008
Owner (REGISTRANT) Power Support USA, Inc. CORPORATION CALIFORNIA 3202 W. Magnolia Blvd.
Burbank CALIFORNIA 91505
Attorney of Record Ken Shibata
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Between the harmonies there is balance

Word Mark BETWEEN THE HARMONIES THERE IS BALANCE

Goods and Services IC 009. US 021 023 026 036 038. G & S: Cases for word processing tapes; **computer stands** specially designed for tilting while holding a computer; computer docking stations; printers; wrist rests for use with computers and computer mouse; mouse pads; computer keyboards; and silicone cases, carrying cases, protective cases, screen protectors, and headphones and earphones, all for computers, audio players, video players, **telephones**, digital cameras, personal digital assistants, computer games, displays, calculators, televisions, GPS devices, and electronic personal organizers.
FIRST USE: 20061101. FIRST USE IN COMMERCE: 20061101

**Standard
Characters
Claimed****Mark Drawing
Code** (4) STANDARD CHARACTER MARK**Serial Number** 77302182**Filing Date** October 11, 2007**Current Filing
Basis** 1A**Original Filing
Basis** 1A**Published for
Opposition** April 1, 2008**Change In
Registration** CHANGE IN REGISTRATION HAS OCCURRED

Registration Number 3448689
Registration Date June 17, 2008
Owner (REGISTRANT) Power Support USA, Inc. CORPORATION CALIFORNIA 3202 W. Magnolia Blvd
Burbank CALIFORNIA 91505
Attorney of Record Kenichi Shibata
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Music can transcend. It's
what feeds the soul,
spirit. Keep it safe
always.

Word Mark MUSIC CAN TRANSCEND. IT'S WHAT FEEDS THE SOUL, SPIRIT. KEEP IT SAFE ALWAYS.
Goods and Services IC 009. US 021 023 026 036 038. G & S: Cases for word processing tapes; **computer stands** specially designed for tilting while holding a computer; computer docking stations; printers; wrist rests for use with computers and computer mouse; headphones and earphones; mouse pads; computer keyboards; and silicone cases, carrying cases, protective cases, screen protectors, all for computers, audio players, video players, **telephones**, digital cameras, personal digital assistants, computer games, displays, calculators, televisions, GPS devices, and electronic personal organizers. FIRST USE: 20061101. FIRST USE IN COMMERCE: 20061101

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Trademark Search Facility Classification Code NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks

Serial Number 77302135

Filing Date October 11, 2007

Current Filing Basis 1A

Original Filing Basis 1A

Published for

Opposition March 25, 2008
Change In Registration CHANGE IN REGISTRATION HAS OCCURRED
Registration Number 3444915
Registration Date June 10, 2008
Owner (REGISTRANT) Power Support USA, Inc. CORPORATION CALIFORNIA 3202 W. Magnolia Blvd
Burbank CALIFORNIA 91505
Attorney of Record Kenichi Shibata
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Griffin Technology

Word Mark

GRIFFIN TECHNOLOGY

Goods and ServicesIC 009. US 021 023 026 036 038. G & S: Electronic devices and accessories, namely, FM transmitters, personal digital music player cases, earphones, electronic power supplies, electric converters, electrical connectors; electrical cables, **computer stands**, audio and video adapters, radio receivers, remote controls, speakers, phone and digital music player docks, battery chargers, and portable device mounts for use with digital music players, **telephones**, automobiles and personal computers. FIRST USE: 19961030. FIRST USE IN COMMERCE: 19961030**Standard Characters Claimed****Mark Drawing Code**

(4) STANDARD CHARACTER MARK

Serial Number 77339067**Filing Date** November 28, 2007**Current Filing Basis** 1A**Original Filing Basis** 1A**Published for Opposition** October 21, 2008**Registration Number** 3556211**Registration** January 6, 2009

Date

Owner (REGISTRANT) Griffin Technology, Inc. CORPORATION TENNESSEE 1930 Air Lane Drive
Nashville TENNESSEE 37210

**Attorney of
Record**

Jason L. Hornkohl

Disclaimer

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TECHNOLOGY" APART FROM THE
MARK AS SHOWN

Type of Mark

TRADEMARK

Register

PRINCIPAL

**Live/Dead
Indicator**

LIVE

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Word Mark	GRIFFIN
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Electronic devices and accessories, namely, FM transmitters, personal digital music player cases, earphones, electronic power supplies, electric converters, electrical connectors; electrical cables, computer stands , audio and video adapters, radio receivers, remote controls, speakers, phone and digital music player docks, battery chargers, and portable device mounts for use with digital music players, telephones , automobiles and personal computers. FIRST USE: 20021130. FIRST USE IN COMMERCE: 20021130
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	26.11.27 - Oblongs not used as carriers for words, letters or designs
Trademark Search Facility Classification Code	SHAPES-GEOMETRIC Geometric figures and solids including squares, rectangles, quadrilaterals and polygons
Serial Number	77329993
Filing Date	November 15, 2007
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	October 21, 2008

Registration Number 3556144
Registration Date January 6, 2009
Owner (REGISTRANT) Griffin Technology, Inc. CORPORATION TENNESSEE 1930 Air Lane Drive
Nashville TENNESSEE 37210
Attorney of Record Jason L. Hornkohl
Description of Mark Color is not claimed as a feature of the mark. The mark consists of the word "Griffin" surrounded by an oval.
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark GNET

Goods and Services

IC 009. US 021 023 026 036 038. G & S: Computers; computer peripherals; computer accessories, namely, access points, adapters, arms for mounting computers, computer monitors and computer peripherals, automated call attendants, computer back-up drives, back-up power supplies, tape-back up drives for computers, batteries, bridges boots, bar code readers, bridges, battery back-ups, computer buffers, electrical cables, electrical cable assemblies, cable testers, card buses, converters, computer card drives, electrical connectors, PC cards, namely, PCMCIA cards, sound cards, and graphic cards; computer data couplers; computer and video game cartridges; computer carrying cases; cabinets for loudspeakers; cameras, namely, digital cameras, photographic cameras and 35mm cameras; computer cable hoods; computer cable testers; CD holders; CD cases; paper holders specially designed for attaching to computer monitors; electric cords; central processing unit coolers; electrical controllers; cleaning kits comprised primarily of a cleaning diskette, disk drive head cleaning solution, screen cleaning wipes, equipment cleaning wipes, anti-static wipes, laser printing cleaning paper, CD-ROM lens cleaners, keyboard cleaner, lint free wipes and packaging used to store the cleaning kit, all sold as a unit; computer monitor and keyboard covers; computer disc and compact disc drives; computer equipment dust covers; blank diskettes; blank disks; computer screen filters; computer cooling fans; conductive fibers, namely, fibers for conducting electrical charges and static electrical charges; computer facsimile modem boards; computer software for providing firewall protection; communication hubs; hard drives for computers; computer housings; computer screen hoods; computer disk holders; headphones; audio headsets; IP modem; print and port sharers; computer joysticks; computer keyboards; laser pointers; electronic or electric locks. power line conditioners, loop back testers; modems; computer mice; electronic circuit motherboards; computer mouse mats; computer monitors; magnifying glasses; modem/LAN combination circuit cards; multiplexers; mini communications hubs; microphones; network interface cards; electric plugs; patch panels; electric panel mounts; computer printers; radio pagers; rack mounts for computer hardware; computer network routers; electrical raceways; mounting racks for telecommunications hardware; CD-ROM rewriters; computer monitor risers; communications or data repeaters; read only memory computer chips; random access memory computer chips; communications servers; electric switches, voltage surge protectors; voltage surge suppressors; voltage surge arrestors; voltage surge stations and circuit boards; fiber optic cable splitters; audio speakers; scanners; **computer stands** specially designed for holding a computer, printer and accessories; suspenders for use in suspending computer equipment; supports, namely, wrist supports for computer mouse users; computer screen filters;

security kits containing primarily electric cables, electric locks, and keys therefor; switch boxes; transceivers; magnetic tape drives; blank magnetic back-up tapes; computer towers; computer terminal adaptors, transmission terminators; anti-static wrist discharges, lead-free solders for the electronics industry; computer mouse, namely, trackballs; **telephones**, uninterruptible power supplies; wall jackets; wall plates; wall mounts, all for mounting computer equipment and electronics; computer wrist rests, and wrist straps. wire cable ties, computer software, namely, computer software for word processing, data base management, Internet searching, measuring or monitoring the performance of a modem, allowing network software to be configured to a computer network operating systems, measuring or monitoring the performance of a network, remote access from one terminal to a terminal at a remote location, network management, and terminal operation. FIRST USE: 19991101. FIRST USE IN COMMERCE: 20000901

Mark Drawing Code (1) TYPED DRAWING
Serial Number 76408923
Filing Date May 16, 2002
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition March 11, 2003
Registration Number 2821631
Registration Date March 9, 2004
Owner (REGISTRANT) GENTEK MARKETING INC. CORPORATION CANADA 485 Millway Avenue Concord, Ontario CANADA L4K 3V4
Attorney of Record SHELDON LAZAROVITZ
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed:
June 15, 2007
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Firefly Technologies, Inc.

Serial No. 76365573

Michael M. McGaw of Smith & Hopen, P.A. for Firefly
Technologies, Inc.

Brian Pino, Trademark Examining Attorney, Law Office 114
(K. Margaret Le, Managing Attorney).

Before Bucher, Grendel and Walsh, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register
of the mark **FIREFLY** (*in standard character format*) for goods
identified in the application, as amended, as follows:

"systems for alphanumeric text entry, namely,
hand-held and desktop computer input
keyboards and keypads" in Int. Class 9.¹

This case is now before the Board on appeal from the
final refusal of the Trademark Examining Attorney to
register this designation based upon Section 2(d) of the
Trademark Act, 15 U.S.C. § 1052(d). The Trademark Examining

¹ Application Serial No. 76365573 was filed on February 4, 2002
based upon applicant's allegation of a *bona fide* intention to use
the mark in commerce.

Attorney has found that applicant's mark, when used in connection with the identified goods, so resembles the mark

FIREFLY (*in standard character format*) registered for the following goods:

"video cameras; digital video input and storage devices, namely, light sensitive devices such as CCD's or CMOS cameras which transfer digital video and image data over devices such as IEEE1394 ports, USB ports and ethernet interfaces to recording devices, namely, hard drives, floppy and compact disks and memory chips; digital and analogue imaging cameras and software for computer imaging uses with said cameras; computer and video hardware, namely, light to electricity converting devices such as CCD and CMOS cameras, and cameras that have image processing capabilities, and software for use with said cameras for creating and capturing still and video images; computer software for acquiring, capturing, creating, manipulating, converting, transferring, presenting and storing still and video images; computer hardware and software for 3-D range sensing, namely, for object dimensioning, object classification, object tracking, and motion control, namely, autonomous navigation; computer hardware and software for 3-D digitization, namely, for 3-D modeling, virtual reality, animation and photorealistic rendering; computer hardware and software for capturing and processing of images associated with video surveillance; and instructional manuals sold as a unit therewith" in International Class 9,²

² Registration No. 2528664 issued on January 8, 2002 based upon an application filed on August 30, 2000, later claiming first use anywhere at least as early as November 9, 2000 and first use in commerce at least as early as December 8, 2000.

as to be likely to cause confusion, to cause mistake or to deceive.

The Trademark Examining Attorney and applicant have briefed the case. We affirm the refusal to register.

In arguing for registrability, applicant contends that given the difference in the type of goods offered as well as the dissimilarity of trade channels, and in light of the sophistication of the consumers, the Office has failed to demonstrate a likelihood of consumer confusion.

By contrast, the Trademark Examining Attorney contends that the evidence of record demonstrates that the respective goods are of a kind that may emanate from a single source, are highly related, and that the applicant's goods are within the registrant's normal zone of expansion.

Likelihood of Confusion

We turn then to a consideration of the issue of likelihood of confusion. Our determination of likelihood of confusion is based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. See In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also In re Majestic Distilling Co., Inc., 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any

likelihood of confusion analysis, however, two key, although not exclusive, considerations are the similarities between the marks and the relationship between the goods and/or services. See Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also In re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

The marks

We turn first to the du Pont factor focusing on the similarity of the marks in their entireties. The Trademark Examining Attorney argues that applicant's mark is the same as the registered mark in appearance, sound, connotation and commercial impression. Applicant admits that the respective marks are identical. [Applicant's brief, p. 3]. Hence, we find that applicant's mark is identical in all respects to registrant's cited mark.

The goods

We turn next to the relationship of the goods as described in the application and cited registration. As noted above, the marks are identical in every respect. With both registrant and applicant using the identical designation, "the relationship between the goods on which the parties use their marks need not be as great or as close

as in the situation where the marks are not identical or strikingly similar." Amcor, Inc. v. Amcor Industries, Inc., 210 USPQ 70, 78 (TTAB 1981). See also In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993) ["[E]ven when goods or services are not competitive or intrinsically related, the use of identical marks can lead to an assumption that there is a common source."].

In order to support a holding of likelihood of confusion, it is sufficient that the respective goods are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. See On-line Careline Inc. v. America Online Inc., 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000); In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); and In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

We agree with applicant that our analysis must focus on the way the identified goods are encountered in the marketplace by typical consumers and whether consumers will be confused as to the source of the products. See 3 J.

Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION,

§ 23:58 (4th ed. 2004) [a tribunal must "attempt to recreate the conditions under which prospective purchasers make their choices" in order to arrive at a "realistic" evaluation of likelihood of confusion].

When faced with a determination of likelihood of confusion in the field of computers, computer peripherals and components, and an array of digital gadgets having state-of-the-art microprocessing capabilities, we certainly have no *per se* rule, for example, that computer keyboards are related to digital video camera and collateral devices for image capture and manipulation.

On the other hand, applicant argues that "the functionality of keyboards and image capture devices, such as video cameras, is quite different." Applicant argues that the uses of a computer keyboard and an image capture device are in no way so related such that they would be likely to be connected in the mind of a prospective purchaser.

We agree with the Trademark Examining Attorney that merely because applicant's goods may have different "functionalities" or uses from registrant's goods, this fact does not preclude a finding of likelihood of confusion. The issue is not likelihood of confusion between particular

goods, but likelihood of confusion as to the source of those goods. *In re Shell Oil Co., supra.* In support of his position, the Trademark Examining Attorney has made of record a sampling of third-party registrations (all based on use in commerce) drawn from the X-SEARCH database showing that a number of third parties have registered the same mark for both computer keyboards and devices for image capture such as video cameras:

AURORA

for, *inter alia*, "... computer keyboards ... photographic cameras, video cameras and motion picture cameras; video recorders ..." in International Class 9;³

HEIDELBERG

for, *inter alia*, "... keyboards, trackballs, touchscreens, video cameras ..." in Inter. Class 9;⁴

MAXFIRE

for, *inter alia*, "... computer keyboards ... and video cameras" in International Class 9;⁵

TRIANA

for, *inter alia*, "... keyboards ... photographic video cameras and lenses therefore ..." in Int. Class 9;⁶

³ Registration No. 2263931 issued on July 27, 1999; Section 8 affidavit (six-year) accepted.

⁴ Registration No. 2275080 issued on September 7, 1999. Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged.

⁵ Registration No. 2283631 issued on October 5, 1999. Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged.

⁶ Registration No. 2320324 issued on February 22, 2000. Section 8 affidavit (six-year) accepted.



HYPIC T

SCHOOL TECHNOLOGY SOLUTIONS

EPSON SMART PANEL

I/O MAGIC

for, inter alia, "... computer keyboards ... video cameras ..." in International Class 9;⁷

for, inter alia, "... computer keyboards ... video cameras, video cassette recorders ..." in International Class 9;⁸

for, inter alia, "... digital cameras, television sets, television cameras, video cameras ... computer keyboards ... audiovisual apparatus and apparatus for recording, transmitting or reproducing sound or images, namely, video cassette recorders, video cameras, sound tape recorders, video tape recorders, video disk players ..." in International Class 9;⁹

for, inter alia, "... keyboards ... video recorders ... video cameras ..." in International Class 9;¹⁰

for, inter alia, "... computer keyboards ... video cameras, digital cameras ..." in International Class 9;¹¹

for, inter alia, "... computer keyboards; video cameras ... digital cameras ..." in International Class 9;¹²

⁷ Registration No. 2409124 issued on November 28, 2000. Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged.

⁸ Registration No. 2421709 issued on January 16, 2001. Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged.

⁹ Registration No. 2520648 issued on December 18, 2001.

¹⁰ Registration No. 2563962 issued on April 23, 2002.

¹¹ Registration No. 2574992 issued on June 4, 2002.

¹² Registration No. 2623403 issued on September 24, 2002.

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for, inter alia, "... *keyboards ... digital and video cameras ...*" in Inter. Class 9;¹³

for, inter alia, "... *computer keyboards ...* apparatus for recording, transmission or reproduction of sound or images, namely, *digital cameras, digital video recorders, ... video cameras, photographic cameras, video monitors ...*" in International Class 9;¹⁴

for, inter alia, "... *video cameras, teleprompters, keyboards ...*" in International Class 9;¹⁵

for, inter alia, "... *computer keyboards ...* video cassette recorders, *video cameras, sound tapes recorders, video tape recorders ... digital cameras ...*" in International Class 9;¹⁶

for, inter alia, "... remote *keyboards* for personal computers ... *video cameras, digital cameras ...*" in International Class 9;¹⁷

-
- ¹³ Registration No. 2694811 issued on March 11, 2003.
¹⁴ Registration No. 2782574 issued on November 11, 2003.
¹⁵ Registration No. 2788645 issued on December 2, 2003.
¹⁶ Registration No. 2823690 issued on March 16, 2004.
¹⁷ Registration No. 2823809 issued on March 16, 2004.

Channels of trade

There are no limitations in either applicant's or registrant's identifications of goods as to their nature, type, channels of trade or classes of purchasers. Hence, it is presumed that the scope of the registration encompasses all goods of the nature and type described, and that the identified goods move in all channels of trade that would be normal for such goods. Accordingly, both applicant's and registrant's goods must be deemed to be rendered in all channels of trade that are appropriate for computers, digital video cameras, and the components of each. In re Melville Corp., 18 USPQ2d 1386 (TTAB 1991) [women's shoes are complementary to women's outerwear, and there are no restrictions on registrant's channels of trade]; and In re Elbaum, 211 USPQ 639, 640 (TTAB 1981) ["geriatric preparation" is considered to encompass "therapeutic soak for arthritic hands and feet"]. Hence, the related du Pont factor focusing on the channels of trade also favors a finding of likelihood of confusion.

The conditions under which and buyers to whom sales are made

We noted earlier that neither applicant nor registrant has limited the identification of goods to particular customers. Moreover, applicant has acknowledged that its

own goods (e.g., computer keyboards) are commonly sold at a relatively low price and therefore would not be subjected to a high level of scrutiny or care.

As to registrant's goods, applicant argues that "these are highly sophisticated goods that would only be purchased by a highly sophisticated consumer after exercising a great deal of care." Applicant bases this conclusion, in part, on registrant's identification of goods (e.g., "computer hardware and software for 3-D range sensing, namely, for object dimensioning, object classification, object tracking, and motion control, namely, autonomous navigation; computer hardware and software for 3-D digitization, namely, for 3-D modeling, virtual reality, animation and photorealistic rendering ...").

However, this does not change the outcome herein. Assuming that registrant's goods may well be offered to both professionals and the general public, the standard of care is determined by looking to the least sophisticated purchasers in the class - ordinary consumers. Additionally, the fact that some purchasers may be sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. See In re Decombe, 9 USPQ2d 1812 (TTAB 1988); and In re Pellerin

Milnor Corp., 221 USPQ 558 (TTAB 1983). Rather, even consumers of registrant's goods who are professionals would mistakenly believe that these respective goods originate with, or are in some way associated with, the same producer.

Conclusion:

Applicant's goods are sufficiently related to registrant's goods that given their sale under identical marks, ordinary consumers are likely to be confused as to the source or origin of the respective goods.

Decision: We affirm the refusal to register herein based upon Section 2(d) of the Lanham Act.